IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 307 OF 2000
IN
SESSIONS CASE NO. 317 OF 1999

Punya Chandu Chavan
Convict Prisoner no.C-11059,
Yerwada Central Prison,
Pune-6. Appellant
(original accused)

vs.

The State of Maharasthra Respondent.

Mr.Abhaykumar Apte for the appellant-accused.

Ms.V.R. Bhonsale, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd/7th February 2005

ORAL JUDGMENT (Per R.M. Lodha,J.)

The son who has been held guilty of having committed murder of his father and sentenced to suffer life imprisonment vide judgment dated 18th December 1999 by IIIrd Additional Sessions Judge, Pune is in appeal before us.

2. On 4th October 1999 IIIrd Additional Sessions Judge, Pune charged the accused-appellant for an offence punishable under Section 302 of the Indian Penal Code

thus:

> . "That you on or about 9-3-1999 at about 6 p.m. at 536 Raviwar peth, Pune, did commit murder by intentionally or knowingly causing the death of Chandu Ramji Chavan and thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance;
>
> . AND I hereby direct that you be tried by me on aforesaid charge."

3. Upon hearing and understanding the aforesaid charge,

the accused pleaded not guilty.

4. The prosecution in support of its case relied upon the circumstantial evidence. It examined Hemraj R.Dube (PW-1), Amol C. Lokhande (PW-2), Ashok G. Bhattad (PW-3), Prashant P. Tapre (PW-4), Sony P. Chavan (PW-5), Dr. Milind S. Wable (PW-6), Shailesh S. Shankhe (PW-7), Gulab G. Lande (PW-8) and Madhukar P. More (PW-9). The various recovery panchanama, memorandum of post mortem, spot panchanama and the C.A. reports were got proved through aforesaid witnesses.

5. The prosecution case is thus:

. The accused was employed by PW-2 as watchman at 536, Raviwar Peth, Pune. The said plot belonged to PW-3 and construction activity was being carried out there. PW-2 had provided centring material and the necessary labour

for construction work. The accused was staying with his family in a room at the site at 536, Raviwar Peth. On 9th March 1999, in the morning PW-2 went to his other site at Kothrud. The accused was earlier engaged by PW-2 for the site at Kothrud. When PW-2 went to his Kothrud site, he found father of the accused there. PW-2 informed the accused about this on telephone and supplied the address of the accused to his father. The father of the accused then left for Raviwar Peth and reached the house of the accused. The father had his lunch there. He demanded a sum of Rs.30,000/- from the accused for repayment of the bank loan and for the purposes of the well. The accused declined to give any money to the father. Some quarrel ensued between the two. At about 3 to 4 p.m. both the father and the son went out and they returned at about 6 p.m. Both of them were found to have consumed liquor when they returned home. The father again demanded money from the accused. The quarrel started between the two. In the said quarrel the father abused the accused and annoyed thereby, the accused caught held the head of the father and knocked the same on the R.C.C. column; the father sustained bleeding injury and he fell on the ground. The accused then strangulated the father by coir rope.

The accused went to grocery shop of PW-3 which was just opposite the place of the incident for informing the PW-2 that his father was taken ill. The accused

could not contact PW-2 on phone. The accused then went to Raviwar Peth police chowky. The police constable PW-8 was there. The accused told PW-8 that his father has been injured and requested him to give yadi (letter of request) for medical examination of his father. PW-8 prepared yadi and went to the spot along with the other police constable. The accused also accompanied them. From the place of incident, the father was taken to Sasoon hospital in autorickshaw by the accused along with police constable P.C. Rengale. PW-8 returned to Raviwar peth police chowky, noted the incident in khabari book and informed Faraskhana police station about the incident. PW-8 then went to Sasoon hospital and on enquiry he was told by the medical officer that accused's father was already dead. PW-6 conducted an autopsy on the dead body which commenced at 11 p.m. and was concluded by 00.10 hours (10.03.1999). According to him the cause of death of the deceased in the ordinary course of nature was the head injury associated with asphyxia due to strangulation. PW-7 who was informed by PW-8 about the injuries sustained by the deceased went to the spot and prepared the spot panchanama. PW-7 found that there were blood stains present on the R.C.C. column and also on earth. PW-7 deputed one police constable to guard the site. PW-7 then went to Sasoon hospital and interrogated the accused and also his wife PW-5. They were brought to Faraskhana Police Station

for further enquiry. On the basis of the medical report that the death of the deceased was due to strangulation and head injury, PW-7 suspected the case of murder; interrogated the accused and thereafter lodged First Information Report. The investigation was then handed over to PW-9. On 10th March 1989 at about 8.15 a.m., the accused was arrested. On his disclosure statement, recovery of pant and coir rope was made. The articles having blood stains were sent for chemical analysis.

6. On conclusion of the investigation, the charge-sheet was submitted in the Court of Magistrate against the accused and he was committed to the Court of Sessions for trial. As already indicated above, the IIIrd Additional Sessions Judge, Pune, charged the accused for the offence punishable under Section 302 IPC.

7. The learned trial Judge considered the following incriminating circumstances for holding the accused guilty of murder:

(one) Motive;

(two) The deceased was found dead at the place the accused resided;

(three) The shirt that accused was wearing at the time of arrest was found to have blood stains having group "B" (the blood group of the deceased);

(four) The recovery of the clothes and the coir rope

(Kathya) at the instance of the accused;

(five) The clothes as well as coir rope were found to have stains of human blood of group "B" and

(six) The subsequent conduct of the accused.

8. The learned counsel for the appellant strenuously urged that motive spelt out by the prosecution hardly inspires the confidence. He posed the question: Why should a son kill his father even if father persistently demanded money from his son for squaring off the bank debt because ultimately the liability would be fastened on the son as a legal heir? According to the learned counsel the alleged motive is no motive. He would submit that the blood stains on the clothes of the accused were obvious since the accused lifted his father in an injured and bleeding condition and took his father to hospital in autorickshaw. The learned counsel, thus, submitted that the blood stains of group "B" on the clothes of the accused were sufficiently explained. He referred to the evidence of PW-3 and submitted that immediately after the incident the accused went to the shop of PW-3 and if the accused had committed the murder of his father, the blood stains on his clothes would have been noticed by PW-3, but that was not so since at that time there were no blood stains on his clothes. He submitted that the prosecution evidence pertaining to the recovery of clothes and coir rope does not deserve

to be relied upon. As regards the subsequent conduct of the accused the learned counsel would submit that there was nothing unnatural in it. The accused having seen his father lying in an unconscious condition due to injuries inflicted by some person went to police station to obtain 'yadi' - letter of request - for medical treatment of his father. The learned counsel would submit that it was the accused who went to the police station for police yadi; it was the accused who took the father to the Sasoon hospital in an injured condition. In the hospital he as well as his wife PW-5 remained with the dead body. The learned counsel, thus, submitted that the prosecution has not been able to prove beyond reasonable doubt that the accused appellant committed murder of his father and, therefore, benefit of doubt deserves to be given to him.

9. The learned Additional Public Prosecutor supported the findings recorded by the IIIrd Additional Sessions Judge, Pune. She contended that the circumstantial evidence led by the prosecution proves beyond reasonable doubt that the appellant was guilty of having committed the murder of his father.

10. We bestowed our thoughtful consideration to the submissions of the learned counsel for the parties and perused the record.

11. Dr.Milind Sharad Wable (PW-6) deposed before the Court that on 09.03.1999 at about 10.30 p.m., the dead body of Chandu Ramji Chavan was brought by Faraskhana Police Station for post-mortem examination. He conducted post-mortem examination immediately thereafter between 11 p.m. and 00.10 a.m.(10.03.1999). On post-mortem examination, he found the following external injuries on the dead body of Chandu Ramji Chavan:

1. Oblique lacerated wound on right side of scalp 1" lateral to saggital suture and 1.2" above lambdoid suture, measuring 3/4 x 1/4" Bone deep.

2. Abrasion 1.1/2" above medial end of left eyebrow 1/2" in dimenter.

3. Abrasion 1/2" lateral to injury No.2, 3/4" in Diameter.

4. Both black eyes.

5. Lacerated wound overlatral end of left eyebrow horizontal in direction, 1/2 "X1/4" bone deep.

6. Abrasion 1/2" below lateral angle of right eye, 1/4" in diameter.

7. Abrasion over nose, measuring 1.1/2x3/4" involving both alae.

8. Contused laceration on inner aspect of right side of per lip. Laceration measuring 3/4" long on frenum. Surrounding area of 1.1/2x1.1/2 contused.

9. Contused laceration on inner aspect of lower lip, 1/2" left lateral to midline. Laceration measuring 1/2x1/2. Surrounding area of 2" diameter contused.

10. Horizontal ligature mark on neck, 1/2"

above the leveal of thyroid, completely encircling the neck, measuring 16x1.1/2", with levels as 2.1/4" below chin and 2.1/2" below mastoid process on either side, Underlying skin brownishand perchment like.

11. Abrasion on right side of chest, over medial end and of clavicle measuring 3/4" x 1/2".

12. Two abrasions right elbow, measuring 1/2" in diameter each, separated by a distance of 1" from each other.

13. Contusion of tongue on both lateral margins, measuring 2x3/4" on each side.

14. Laceration of tongue against the upperincisors, measuring 1/2" long.

12. The following internal injuries were also noticed

by PW-6:

1. Corresponding to external injury No.1:

a) Hematoma under scalp, measuring 3x2".

b) Crack fracture of right parietal bone, 2" long.

c) Subdural haemorrhange, 3x2".

d) Subarachnoid haemorrhage with contusion of right patietal olge, 2x1.1/2" and right temporal lobe, 2.1/2x1.1/2".

2. Corresponding to external injury No.2 and 3:-

a) Hematoma under scalp, 2x1"

b) Subdural haemorrhage 2x1.1/2'.

c) Subarachooid haemorrhage with contusion of left frontal lobe, 1.1/2 diameter.

3. Corresponding to external injury No.10:-

a) Subcutaneous haemorrhages present.

b) Peritradheal haemotoma, 2.1/2x2".

c) Fracture of body of hyoid bone, in the middle with antemortem blood cloths adherent.

4) Also found: 1) Fracture of 6th rib on right side, 2" away from midline, with hematoma of 2x1" on outer side and 3x2" on inner aspect of rib. ii) Contusion of mesentry, measuring 2"x1.

13. PW-6 pointed out that all injuries were antemortem and recent. External injury nos.1, 2, 3 and 10 along with corresponding internal injuries were sufficient to cause death in ordinary course of nature. In his opinion, Chandu Ramji Chavan died due to asphyxia as a result of strangulation associated with head injury. His evidence establishes that the death of Chandu Ramji Chavan was homicidal.

14. The accused was arrested on 10.03.1999 in the morning at about 8.15 a.m. At the time of his arrest he was found wearing the shirt having blood stains. PW-4 (the witness to the arrest panchanama) in his deposition before the Court stated that the shirt on the person of the accused was seized and the panchanama (Ex.15) was prepared. On the disclosure statement of the accused, coir rope (kathya) and a trouser were recovered. The disclosure statement is Ex.16 and seizure panchanama of the recovery of coir rope and the trouser is Ex.17 on

record. The coir rope as well as the trouser recovered at the instance of the accused were found to have blood-stains.

15. During the investigation, the blood and nail clipping of the accused were procured and sent for chemical analysis. The C.A. report (Ex.42/1) reveals that the blood group of the accused is ‘AB’. The blood of the deceased and the scalp hair were also sent for chemical analysis. The C.A. report (Ex.43/1) shows that the blood group of the deceased was "B" group. The C.A.report (Ex.44/1) reveals that the blood stains found on the shirt seized from the accused at the time of his arrest and the trouser recovered at his stance were ‘human’ having group ‘B’. This incriminating evidence was put to the accused in statement under Section 313 of Code of Criminal Procedure. He stated that he did not know how blood group of "B" was found on his clothes. The accused also gave written say under Section 313 of the Code of Criminal Procedure. Not a word is stated therein explaining the blood stains on his clothes. We find that in the cross-examination of PW-8 the suggestion was put forth that blood was present on the clothes of the deceased and in the rickshaw the accused sat on the pillion seat by holding the accused. This cross examination hardly explains the blood stains of group "B" found on the shirt and the trouser of the

accused.

16. In the intervening night of 09.03.1999 and 10.03.1999 after the incident had occurred, the spot of occurrence was inspected. That was before the accused was arrested. PW-4 who is witness to spot panchanama (Ex.11) deposed in unequivocal terms that there were two plastic-type buttons present on the spot. The shirt which the accused was wearing at the time of his arrest did not have two buttons. The said buttons were sent for chemical analysis and as per C.A.report (Ex.45/1) one of the buttons at Ex.8 (button labelled as BP-555/99/8) tallied with the button of the accused's shirt in respect of hue and physical characteristics. We also had a close look at that button seized from the spot of occurrence and the shirt and find ourselves in agreement with the CA Report. This circumstance also negates his defence that some thieves committed the murder of his father.

17. The subsequent conduct of the accused after the incident had occurred is also not normal. PW-3 deposed that the accused came to his shop (the said shop is situated opposite the place of incident) at about 7 to 7.30 p.m. and wanted to call PW-2 on phone to inform him that his father (the deceased) was taken ill. The accused did phone PW-2 but PW-2 was not available. PW-3

asked the accused that if his father was ill, he could take money from him (PW-3). The accused did not accept any money from him. The accused then went to Raviwar Peth Police chowky. The Head constable Lande (PW-8) in his deposition stated that accused came to Raviwar-Peth Police chowky on 09.03.1999 at about 7.45 p.m. The accused was in frightened mood and condition. The accused requested him to give police yadi for medical treatment of his father as his father was lying unconscious in injured condition. From the deposition of PW-3 and PW-8, it is seen that the accused gave different versions to PW-3 and PW-8. To PW-3, the accused stated that his father was taken ill while to PW-8 he stated that his father was lying unconscious in injured condition and that he wanted to take him to the hospital and for that he needed police yadi from PW-8. If the injuries were caused to the accused's father by somebody while committing theft or robbery, as is the defence set up by the accused, he would not have stated to PW-3 that his father has been taken ill; he would have sought help from PW-3.

18. Certain facts are clearly established. The deceased came to Pune on 09.03.1999. He went to the place of the accused at Raviwar Peth in the noon. The deceased was indebted to the Bank and he demanded money from the accused for paying off the said debt. The

accused was not prepared to pay any amount to his father. There was an altercation between the father and the son. The incident occurred outside the house of the accused. The motive to that extent is established.

19. Thus, we find that the prosecution has been able to establish (one)the shirt that accused was wearing at the time of his arrest had blood stains of group "B" (blood group of the deceased);(two) the recovery of the trouser having blood stains of group ‘B’ at the instance of the accused;(three)the recovery of coir rope having blood stains at the instance of the accused;(four)the incident occurred outside the house of the accused;(five)the seizure of a button at the place of occurrence - the said button tallies with the other buttons of the shirt that the accused was wearing at the time of his arrest;(six)the unnatural and abnormal conduct of the accused subsequent to the incident and (seven)the motive. These circumstances established by the evidence of prosecution complete the chain implicating the accused of having committed murder of his father and are incompatible with the innocence of the accused.

20. We, thus, find ourselves in agreement with the view of the learned trial Judge and do not find fault in conviction of the accused for the offence punishable under Section 302 of the Indian Penal Code.

21. The appeal fails and is dismissed.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)